COLD STORAGE SINGAPORE [1983] PTE. LTD.

v.

THE MANAGEMENT CORP. OF CHANCERY COURT & ORS.

COURT OF APPEAL, SINGAPORE
YONG PUNG HOW CJ
TS SINNATHURAY J
LP THEAN J
[CIVIL APPEAL NO. 84 OF 1989]
30 DECEMBER 1991

LANDLORD AND TENANT: *Allegation of derogation of grant and breach of terms of quiet enjoyment or nuisance - Levy on vehicles entering Chancery Court - Car parking scheme - Appellants seek declaration and injunction.*

The appellants are monthly tenants of a shopping unit (the said premises). Pursuant to the tenancy agreement, the appellants agreed to use the premises solely as a supermarket. The first respondent R1 is a body corporate comprising the owners of all the units of Chancery Court, and the second to thirteenth respondents were members of the management committee of R1 who managed the housing estate.

In 1987, a resolution was passed at an extraordinary general meeting of the respondent, the effect of which was to introduce a car parking scheme which required non-resident motorists entering the housing estate to pay a parking fee of $1. Pursuant to negotiations between the parties, an agreement dated April 1988, was entered into whereby the appellants agreed to, *inter alia*, provide attendants at their cost to man the park booth at certain times and cost.

The agreement expired on 31 March 1989, after which the management committee of the first resondent implemented the parking scheme, which was protested by the appellants.

Proceedings were then instituted by the appellants against the respondents claiming declarations that R1 has no power, and that the 2nd to 13th respondents have no authority to impose a levy on vehicles entering Chancery Court, and an injunction against all the respondents restraining them from imposing the levy.

The learned trial Judge held that the operation of the parking scheme did not cause any substantial interference to the appellant's rights as a tenant of the premises. Hence this appeal.

Held:

[1] On the evidence before the learned Judge, there was no substantial interference with the right of the appellants to carry on the business of a supermarket.

[2] There was no evidence to substantiate the appellants' allegations that the appellants had suffered a loss of revenue or irreparable loss of customer goodwill as a result of the implementation of the car parking scheme.

[Appeal dismissed with costs.]

Case referred to:
O'Cedar Ltd. v. Slough Trading Co. Ltd. [1927] 2 KB 123 ***(foll)***

For the appellants - K. Shanmugam; (Sushil Nair Sukumaran with him)
For the 1st respondent - Ong Bock Kee
For the 4th respondent - David Wee
For the 2nd, 3rd, 6th, 8th and 13th respondents - Chua Lee Ming
For the 5th, 7th, 9th, 10th, 11th and 12th respondents - Terry Ang

JUDGMENT

Yong Pung How CJ:

This was an appeal against the decision of Chan Sek Keong J in which he dismissed the claim of the appellants for declarations and an injunction against the respondents relating to a car parking scheme in a housing estate called Chancery Court. At the conclusion of the hearing we dismissed the appeal with costs. We now give our reasons.

The facts have been set out in great detail in the judgment of Chan Sek Keong J: [1989] 3 MLJ 400, and may be briefly summarised as follows. Chancery Court has a number of shopping units and about 150 residential units. The appellants are a monthly tenant of a shopping unit known as Block 36H, Dunearn Road #0144, Singapore 1130 where they operate a supermarket. Under the terms of the tenancy agreement, the appellants undertook to use the premises as a supermarket and for no other purposes. The first respondent is a body corporate comprising the owners of all the units of Chancery Court, and the second to the thirteenth respondents were at the material time members of the management committee of the first respondent which managed the housing estate.

On 19 April 1987, at the extraordinary general meeting of the first respondent, a resolution was passed which introduced a car parking scheme (parking scheme) under which, among other things, all non-resident motorists entering the housing estate are required to pay a parking fee of $1. Following the passing of the resolution, the appellants became concerned with the effect of the parking scheme on their business and negotiated with the management committee of the first respondent. As a result, an agreement dated 1 April 1988 was executed between the appellants and the first respondent. Under the agreement, the appellants agreed, among other things, to provide attendants at their cost to man the car park booth at certain times and to pay 56% of the cost of resurfacing and maintenance of the roads within Chancery Court, and the agreement was for a term of one year subject to termination by either party giving three months' notice in writing to the other party. On the expiry of the agreement on 31 March 1989, the management committee of the first respondent implemented the parking scheme. The appellants protested against the implementation of the parking scheme, and correspondence between the parties followed which unfortunately did not lead to any amicable resolution of their differences. The appellants then initiated proceedings against the respondents by way of an originating summons claiming, *inter alia*, declarations that the first respondent has no power, and the second to thirteenth respondents have no authority, to impose a levy on vehicles entering Chancery Court and an injunction against all the respondents restraining them from imposing the levy.

Before us, as was before Chan Sek Keong J, the appellants contended that the operation of the parking scheme amounted to a derogation of the grant of the tenancy, a breach of the term of the tenancy for quiet enjoyment and a nuisance. The learned Judge considered their arguments at great length. He found that the operation of the parking scheme did not cause any substantial interference to the appellants' rights as a tenant of the premises. He said, at p. 404:

> But, under the scheme, the plaintiffs' customers are not barred or prevented or even physically hindered from shopping at the supermarket or using the roads in Chancery Court in order to do so. The scheme does not affect pedestrian shoppers or even non-resident motorists who are able to park their cars outside the boundaries of Chancery Court. These customers have free and unrestricted access. Furthermore, the scheme does not prevent non-resident motorists from shopping at the supermarket. What it does is not to prevent them from parking on the grounds of Chancery Court but to prevent them from parking free of charge. Therefore, the scheme affects only non-resident motorists who are not prepared to pay a levy of $1 to park their cars in the grounds of Chancery Court.

He held that the appellants, as a tenant operating a supermarket at the premises, were not entitled to claim for their existing and prospective customers an absolute right to drive their cars and park them by the sides of the roads or in the parking lots in Chancery Court free of charge. Such a right could not be implied by law in favour of the appellants: it was neither necessary nor reasonable. If such right were implied, it would be at the expense of the first respondent who had the obligation to maintain and repair the roads and the parking lots. He also found that while the parking scheme was in operation, the appellants gave a rebate of $1 to each non-resident motorist customer who made purchases totalling above a certain value and held that there was no reason why the appellants could not or should not continue to grant such a rebate, which of course would increase the cost of operating their business. If that was the position, then looking at the matter from that point of view, all that the scheme did would be to make it more expensive or less profitable for the appellants to operate the supermarket. On the authority of *O'Cedar Ltd. v. Slough Trading Co. Ltd.* [1927] 2 KB 123, the learned Judge held that the parking scheme did not amount to a derogation of a grant, and for the same reasons he held that the operation of the scheme did not amount to a breach of the term of the tenancy for quiet enjoyment or a nuisance.

The findings made by the learned Judge are correct, and we are in entire agreement with the conclusion he arrived at and also with his reasoning. Clearly on the evidence before the learned Judge there was no evidence of substantial interference with the right of the appellants to carry on the business of a supermarket. Before us Counsel for the appellants relied on the allegation made by Huw Jenkins, the operation manager of the appellants, in his affidavit to the effect that in the 11 days since the introduction of the parking scheme, the appellants had seen a reduction of their 'customer base by over 2000' and had suffered 'a loss of revenue exceeding $50,000' and that if the parking scheme continued the appellants would suffer irreparable loss in that (a) customer goodwill would be irrevocably lost, and (b) if that situation continued the appellants would make such huge losses that they would have to close down the supermarket. Counsel submitted that this statement was uncontradicted by the respondents and therefore ought to be accepted as evidence of substantial interference with the right of the appellants as the tenant. We rejected this submission. This matter was wholly within the knowledge of the appellants and it is for them to make good such a bald and sweeping statement. However, no daily returns or other records of sales were produced in support; nor were any studies or surveys carried out to show the real impact the parking scheme had or would have on the business of the supermarket. Nothing at all was produced in support. In the circumstances, the failure or omission by the respondents to refute or contradict the statement does not give rise to any inference that they admitted the truth of the statement. Nor does it follow that the Court ought to accept the statement, on the ground that it had not been challenged.

Lastly, it was also argued before us by Counsel for the appellants, as was before the learned Judge, that the first respondent had acted *ultra vires* its powers under the HUDC Housing Estates Act (Ch 131) and that the second to thirteenth respondents had acted without authority in implementing the parking scheme. For the reasons given by the learned Judge, with which we agree, this argument was plainly unsustainable, and we rejected it.

The appeal therefore failed and we dismissed it with costs.

Also found at [1992] 1 CLJ 537